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OFFICE OF PETITIONS

In re Application of
Ikeda et al.
Application No. 08/842,394
Filed: April 23, 1997
Attorney Docket No. 1232-4349

DECISION GRANTING
PETITION

In re Application of
Ikeda et al.
Application No. 09/887,659
Filed: April 24, 2001
For: IMAGE SENSING APPARATUS, IMAGE
PROCESSING APPARATUS AND IMAGE
SENSING SYSTEM

This is a decision on petition under 37 CFR § 1.53(e) filed July 3, 2001, requesting that an improper Continued Prosecution Application (CPA) under 37 CFR § 1.53(d) be treated as an application under 37 CFR § 1.53(b) and be accorded a filing date of April 24, 2001.

On October 25, 2000, a nonfinal Office action was mailed in application No. 08/842,394, which set a three (3) month shortened statutory period for reply. In response, a petition for a three (3) month extension of time and a request for a CPA under 37 CFR § 1.53(d) based on prior application No. 08/842,394 were deposited on April 24, 2001. However, CPA practice no longer applies to applications, other than design applications, if the prior application was filed on or after May 29, 2000.¹ Accordingly, the CPA request was improper because the prior application was filed on or after May 29, 2000.

¹An earlier CPA was filed in application No. 08/842,394 on August 7, 2000. Thus, 37 CFR 1.53(d)(1)(i) does not permit the filing of a further CPA.

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a request for continued examination of the prior application (identified in the request for CPA) under new 37 CFR § 1.114.

On May 4, 2001, a Notice of Improper Request For Continued Examination (RCE) was mailed, stating that the RCE was improper because continued examination under 37 CFR § 1.114 does not apply to an application unless prosecution in the application is closed. The Notice further indicated that if the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of the action. Because applicants did not submit a reply to the nonfinal Office action with the RCE, the application became abandoned on April 26, 2001. A Notice of Abandonment was mailed on August 7, 2001.

On July 3, 2001, applicants filed the present petition under 37 CFR § 1.53(e). Applicants stated that they inadvertently filed a request for a CPA in the above-identified application instead of a continuation application under 37 CFR 1.53(b). Applicants requested that the improper CPA be converted to an application under 37 CFR § 1.53(b). With the present petition, applicants submitted a complete copy of the prior application, a copy of the executed declaration and power of attorney and assignment as filed, drawings, a preliminary amendment, and an authorization to charge the Deposit Account for the petition fee.

The petition is granted.

The application under 37 CFR 1.53(b) filed on April 24, 2001, has been assigned application No. 09/887,659. The CPA request, the present petition, the copy of the executed declaration and power of attorney and assignment as filed, drawings, and the preliminary amendment have been removed from the file of application No. 08/842,394 and have been placed in application No. 09/887,659. A copy of the CPA request and the present petition will be retained in application No. 08/842,394 to complete the record therein.

All further correspondence concerning the application under 37 CFR 1.53(b) should be directed to application No. 09/887,659 not application No. 08/842,394.

The Office finance records will be corrected to show that the \$130.00 petition fee, the \$710.00 filing fee, and the additional claim fees totaling \$1,098.00 paid on April 24, 2001, were paid in application No. 09/887,659, not in application No. 08/842,394.

Application No. 08/842,394 will be forwarded to Files Repository.

Application No. 09/887,659 will be forwarded to the Office of Initial Patent Examination for further processing as an application filed under 37 CFR 1.53(b), not under 37 CFR 1.53(d), with a filing date of April 24, 2001, using the copy of the original application papers submitted on July 3, 2001.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Christina T. Tartera at (703)306-5589.



Eugenia A. Jones
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for Patent Examination Policy

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